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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**(Butte)**

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In re M.A. et al., Persons Coming  
Under the Juvenile Court Law.

C069350

BUTTE COUNTY DEPARTMENT OF  
EMPLOYMENT AND SOCIAL SERVICES,

(Super. Ct. Nos.  
J34232, J34233)

Plaintiff and Respondent,

v.

C.A.,

Defendant and Appellant.

Father of the minors in this case appeals from the juvenile court's orders at the selection and implementation hearing.

(Welf. & Inst. Code, §§ 366.26, 395.)<sup>1</sup> He contends the orders must be reversed because of noncompliance with the Indian Child

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.). We find any error harmless and shall affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Given father's sole contention, we limit the summary of the facts to those relevant to ICWA compliance.

In July 2008, the Butte County Department of Employment and Social Services (the Department) filed section 300 petitions on behalf of the two minors. At that time, father informed the court and the Department that he may have Cherokee, Chippewa and/or Choctaw Indian ancestry. Father filled out an ICWA-020 parental notification of Indian status form.

On August 1, 2008, the Department sent ICWA notice to the 30 relevant tribes, the Bureau of Indian Affairs (BIA), and the parents. The social worker filed a proof of service and copies of the receipts of certified mailing for the parents, the BIA, and all of the tribes. The social worker also filed copies of return receipts for the parents, the BIA, and 28 of the tribes, and copies of correspondence received from many of the tribes. Copies of return receipts from the August 1, 2008 ICWA notice were not filed for Lac Courte Oreilles Band of Salt Lake Superior Chippewa Indians or for Sault Ste. Marie Tribe of Chippewa Indians. However, Lac Courte Oreilles Band of Salt Lake Superior Chippewa Indians responded by letter dated August 5, 2008, and Sault Ste. Marie Tribe of Chippewa Indians responded by letter dated August 25, 2008.

Of the tribes that responded, only Cherokee Nation requested additional information. Cherokee Nation indicated that any missing birth dates and maiden names would be ideal if available and specifically requested the full name and birth date of the paternal grandfather, who was listed in the notice.

Accordingly, on September 9, 2008, the Department sent an amended ICWA notice providing the additional information of the paternal grandfather's middle name and his birth date. The social worker filed a proof of service and copies of the receipts of certified mailing for the parents, the BIA, and all tribes. Copies of return receipts for 26 of the tribes were also filed with the court, along with more correspondence from many of the tribes. Copies of return receipts from the September 9, 2008 amended ICWA notice were not filed for Sokaogon Chippewa Community, Cherokee Nation, Saginaw Chippewa Indian Tribe, and Eastern Band of Cherokee Indians. Sokaogon Chippewa Community responded by letter dated September 18, 2008. Cherokee Nation responded by letter dated September 24, 2008, indicating the minors were not eligible for enrollment. Saginaw Chippewa Indian Tribe had responded to the *previous* notice by letter dated August 11, 2008. Eastern Band of Cherokee Indians had responded to the *previous* notice by letter dated September 2, 2008.

At the dispositional hearing, held on November 17, 2008, the juvenile court found the ICWA did not apply. The minors

were adjudicated dependents and reunification services were provided for mother, but not father.

After 18 months of services for mother, reunification failed. The minors were continued as dependents under a plan of guardianship with their foster parents. On September 1, 2011, the juvenile court reaffirmed the plan of guardianship and dismissed the dependency case for one minor, and terminated parental rights with a permanent plan of adoption for the other minor.

### **DISCUSSION**

Father contends the juvenile court erred by failing to ensure proper notice was given to the Indian tribes under the ICWA. We are not persuaded that there was prejudicial error.

The purpose of the ICWA notice provisions is to enable the tribe or the BIA to investigate and determine whether the children are Indian children. (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.) To that end, once the juvenile court has received information that gives reason to believe a child is an Indian child, notice under the ICWA must be given. (*In re Robert A.* (2007) 147 Cal.App.4th 982, 989.) Notice must include all of the following information, if known: the child's name, birthplace, and birth date; the name of the tribe in which the child is enrolled or may be eligible for enrollment; names and addresses of the child's parents, grandparents, great-grandparents, and other identifying information, and a copy of

the dependency petition. (§ 224.2, subd. (a)(5)(A)-(D); *In re Mary G.* (2007) 151 Cal.App.4th 184, 209.)

"[E]rrors in an ICWA notice are subject to review under a harmless error analysis." (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1414.) We do not presume error. Rather, it is father's obligation, as the appellant, to present a record that affirmatively demonstrates error. (*In re D.W.* (2011) 193 Cal.App.4th 413, 417-418.) He has not met this burden.

Father contends the proof of ICWA notice on which the juvenile court relied is inadequate because the Department failed to file return receipt cards for the parents and two of the tribes (Eastern Band of Cherokee Indians and Saginaw Chippewa Indian Tribe) as to the amended ICWA notice. The amended notice contained the additional information, requested by the Cherokee Nation, of the paternal grandfather's middle name and his date of birth.

According to father, although the Department filed proof of mailing via certified mail to all tribes and return receipts establishing proof of delivery to all but four of the other tribes, because it did not file return receipts with respect to Eastern Band of Cherokee Indians and Saginaw Chippewa Indian Tribe, it was impossible for the juvenile court to determine that those two tribes received adequate ICWA notice. We are not persuaded.

The Department is required to file copies of whatever return receipts and tribal responses it receives to the ICWA

notices sent. Specifically, section 224.2, subdivision (c) provides that the Department must file copies of ICWA notices sent "and all return receipts and responses received." California Rules of Court, rule 5.482(b), which implements this provision, states: "Proof of notice filed with the court must include *Notice of Child Custody Proceeding for Indian Child* (form ICWA-030), return receipts, and any responses received from the [BIA] and tribes."

Contrary to father's position, neither provision states that proof of notice is inadequate unless it includes return receipts from every noticed tribe. Nor is it evident that the Department did not comply with the filing provisions. While return receipts are absent for several of the noticed tribes, it appears the Department complied with these provisions by filing the return receipts for the remaining tribes and the numerous responses it *had* received. In any event, the absence of the two return receipts, whether because the Department did not obtain them or because it inadvertently failed to file them with the court, does not establish that the tribes were not actually provided the amended notice.

Indeed, no return receipts were filed for two of the tribes as to the *first* ICWA notice, yet both those tribes sent responsive letters—plainly indicating they had, in fact, received the notices. Likewise, no return receipts were filed for two *other* tribes as to the *amended* ICWA notice and both of those tribes sent responsive letters to the amended notice.

Thus, contrary to father's supposition, the absence of a filed copy of a return receipt does not establish that a tribe did not actually receive the notice.

Here, it is reasonable to conclude that the amended notice was received by all the tribes. The social worker provided a proof of service declaring she had mailed the amended ICWA notice to parents, parents' counsel, and all 30 relevant tribes at the listed addresses. She also filed copies of the receipts of certified mailing for the parents and all 30 relevant tribes. Copies of return receipts for 26 of the tribes were filed with the court, as well as correspondence received from the majority of the tribes. While father presumes to the contrary, it is reasonable to conclude that the amended notice was, in fact, received in due course by the two tribes for which there were no return receipts or additional subsequent responsive letters (Eastern Band of Cherokee Indians and Saginaw Chippewa Indian Tribe), particularly since the amended notices were sent only five weeks after the original notices and sent to the same addresses. (*In re S.B.* (2009) 174 Cal.App.4th 808, 812-813.) We conclude any error in failing to file return receipts as to those two tribes was harmless.

Further, we agree with the sentiments expressed by the court in *In re S.B.*, that counsel for the parents bear a responsibility to raise prompt objections in the juvenile court so that errors can be timely corrected. (*In re S.B.*, *supra*, 174 Cal.App.4th at p. 813.) The juvenile court did not make the

ICWA finding until two months after the amended notices were sent, and the dependency proceedings continued for three years thereafter. Counsel had ample opportunity to raise concerns about the absence of the return receipts without the expense and delay of waiting until an appeal from termination of parental rights many years later.

With respect to father's contention that the failure to file return receipts for the amended ICWA notices as to himself (and mother) is fatal to ICWA compliance, we first note that neither parent changed addresses in the interim and there is nothing in the record to affirmatively indicate either parent did not actually receive the amended ICWA notice. In fact, the record shows the amended ICWA notice was in the juvenile court's file and, thus, available to the parents at any time during the subsequent three years these proceedings were pending. (*In re Miracle M.* (2008) 160 Cal.App.4th 834, 847.) Consequently, contrary to father's contention, the parents were able to review the adequacy of the amended notice and ICWA compliance. Yet, neither parent made any claim in the juvenile court, or on appeal, that the content of the amended notice was deficient. Thus, even if the parents had not received the amended ICWA notices when they were mailed by the Department back in September 2008, father has failed to show grounds for reversal on that basis.

### **DISPOSITION**

The juvenile court's orders are affirmed.

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BUTZ, Acting P. J.

We concur:

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MURRAY, J.

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DUARTE, J.